

CRIMINAL YEAR SEMINAR

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Webinar



Criminal Rules Update

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2021 APAAC Criminal Year in Review: The Arizona Criminal Code

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13-116. Double Punishment

An act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than concurrent. An acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other, to the extent the Constitution of the United States or of this state require.

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State v. Watson, 248 Ariz. 208 (App. 2020)

Issue:
Can the court sentence a defendant to a consecutive term of probation for one offense and a term of imprisonment for another if both convictions stem from the same act?

3

13-203(A). Causal relationship between conduct and result; relationship to mental culpability—Causal relationship

A. Conduct is the cause of a result when both of the following exist:


1. But for the conduct the result in question would not have occurred.
1. The relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.

4

State v. Aragon (Fontes), 249 Ariz. 571 (App. 2020)

Issue:

Is a defendant entitled to a jury instruction on superseding cause when the victim's conduct may have increased the risk for the particular harm occurring, but the risk of harm the defendant foreseeably created was the same risk that the victim suffered?



5

13-603(C). Authorized disposition of offenders—Restitution

C. If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court. . . .

6

13-805(A). Jurisdiction—Court ordered payment

A. The trial court shall retain jurisdiction of the case as follows:

1. ... for purposes of ordering, modifying and enforcing **the manner in which** court-ordered payments are made until paid in full or until the defendant's sentence expires.
2. For all restitution orders in favor of a victim, including liens and criminal restitution orders, for purposes of ordering, modifying and enforcing **the manner in which** payments are made until paid in full.

7

State v. Morgan, 248 Ariz. 322 (App. 2020)

Issue:

Can the trial court retain jurisdiction over future restitution requests, without setting a deadline for those requests to be presented?



8

13-701(D)(6). Sentence of imprisonment for felony—Aggravating circumstances—Pecuniary gain.

D. For the purpose of determining the sentence pursuant to subsection C of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances, except that the court shall determine an aggravating circumstance under paragraph 11 of this subsection:...


6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

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State v. Hernandez, 250 Ariz. 161 (App. 2020)

Issue:

Is 13-701(D)(6) unconstitutionally vague because it fails to define whether it applies to only a benefit that the person committing the crime might gain or if it includes third party benefits?



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13-708(D). Offenses committed while released from confinement—Offense committed while released on bond or on the person's own recognizance


D. A person who is convicted of committing any felony offense that is committed while the person is released on bond or on the person's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense shall be sentenced to a term of imprisonment two years longer than would otherwise be imposed for the felony offense committed while on release.

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State v. Moreno, 249 Ariz. 593 (App. 2020)

Issue:

Does a defendant cease being "on release" for the purposes of 13-708(D) when, at the time of the aggravating felony, he or she was in custody for an unrelated charge?




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13-901.01(A) Probation for persons convicted of possession & use of controlled substances; treatment; prevention; education—First conviction

A. Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.

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State v. Green, 248 Ariz. 133 (2020)

Issue 1:	Issue 2:
Is a conviction for possession of drugs for sale, whether completed or inchoate, a disqualifying conviction for determining eligibility for mandatory probation under 13-901.01?	Does 13-901.01 apply equally to qualifying inchoate and completed drug offenses?
	

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13-905 Restoration of civil rights; persons completing probation

A. Except as provided in subsection K of this section, every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the court to have the judgment of guilt set aside....

K. This section does not apply to a person who was convicted of any of the following:

-
- 2. An offense for which the person is required or ordered by the court to register pursuant to section 13-3821.
-
- 4. A felony offense in which the victim is a minor under fifteen years of age.

15

13-921(B). Probation for defendants under 18 years of age; dual adult juvenile probation—Expungement

A. The court may enter a judgment of **guilt and place the defendant on probation pursuant to this section** if all of the following apply:

1. The defendant is under eighteen years of age at the time the offense is committed.
2. The defendant is convicted of a felony offense.
3. The defendant is not sentenced to a term of imprisonment.
4. The defendant does not have a historical prior felony conviction.

B. If the court places a defendant on probation pursuant to this section, all of the following apply:

1. Except [in situations not relevant here], if the defendant successfully completes the terms and conditions of probation, the court may set aside the judgment of guilt, dismiss the information or indictment, expunge the defendant's record and order the person to be released from all penalties and disabilities resulting from the conviction.

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13-905. Setting aside judgment of convicted person on discharge; application; release from disabilities; firearm possession.

A. Except as provided in subsection K of this section, every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the court to have the judgment of guilt set aside...

K. This section does not apply to a person who was convicted of the following:

2. An offense for which the person is required or ordered by the court to register pursuant to § 13-3821 [as a sex offender].
4. A felony offense for which the victim is a minor under fifteen years of age.

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State v. Furlong, 249 Ariz. 579 (App. 2020)

If a juvenile who has no historical prior felony convictions pleads guilty to two felonies in which the victim is a minor under fifteen years of age, is placed on lifetime adult probation (including sex offender registration and a term of jail, but no imprisonment), is discharged from probation (and the sex offender registration requirement) after apparently successfully completing probation, and then seeks to set aside the judgment of guilt and expunge his record, which statute—A.R.S. 13-905 or A.R.S. 13-921—controls?

We need to verify your age
Are you 18 or older?

YES NO

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13-1202(B) Threatening or intimidating—Enhancement

B. Threatening or intimidating pursuant to subsection A, paragraph 1 or 2 is a class 1 misdemeanor, except that it is a class 6 felony if:

...


2. The person is a criminal street gang member.

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State v. Arevalo, 249 Ariz. 370 (2020)

Issue:

Does 13-1202(B)(2) violate the defendant's right to substantive due process because it enhances a defendant's sentence based solely upon gang status?



20

13-1204(A)(8)(I) Aggravated assault—On a police officer

A. A person commits aggravated assault if the person commits assault as prescribed by section 13-1203 under any of the following circumstances:....

8. If the person commits the assault knowing or having reason to know that the victim is any of the following:....


(i) A public defender while engaged in the execution of any official duties or if the assault results from the execution of the public defender's official duties.

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State v. Wilson, 250 Ariz. 197 (App. 2020)

Issue:

Does a county contract indigent defense counsel qualify as a “public defender” for purposes of 13-1204(A)(8)(i)?



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13-1802(A). Theft—Elements

A. A person commits theft if, without lawful authority, the person knowingly:

1. Controls property of another with the intent to deprive the other person of such property


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13-1814. Theft of means of transportation

A. A person commits theft of means of transportation if, without lawful authority, the person knowingly does one of the following:

1. Controls another person's means of transportation with the intent to permanently deprive the person of the means of transportation.


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State v. Carter, 249 Ariz. 312 (2020)

Issue:

Is theft of a means of transportation a lesser-included offense of robbery?




Theft=lesser included offense of Theft of a Means of Transportation

Theft=lesser included offense of Robbery

Theft of a Means of Transportation=/= lesser included offense of Robbery

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13-2904(A)(1). Disorderly conduct—Fighting, violent or seriously disruptive behavior




A. A person commits disorderly conduct if, with intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person:

1. Engages in fighting, violent or seriously disruptive behavior


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Prosise v. Kottke, 249 Ariz. 75 (App. 2020)



Issue:

Can a defendant be convicted of violating 13-2904(A)(1) when the State does not prove that the victim's peace was indeed disturbed by the defendant's conduct?



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13-3405(A). Possession, use, production, sale, or transportation of marijuana—Prohibited acts.

A. A person shall not knowingly:

...

4. Transport *for sale*, import into this state or offer to transport *for sale* or import into this state, sell, transfer or offer to sell or transfer marijuana.

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State v. Farid, 249 Ariz. 457 (App. 2020)

Issue:

Does 13-3405(A)(4) require proof that the defendant imported marijuana “for sale”?



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13-3415(A). Possession, manufacture, delivery and advertisement of drug paraphernalia—Use or possess with intent to use.

A. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter. Any person who violates this subsection is guilty of a class 6 felony....

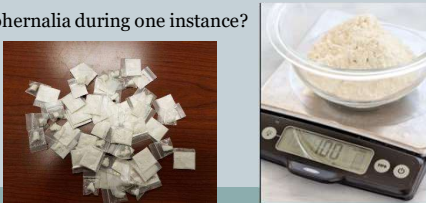
2. "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a drug in violation of this chapter.

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State v. Soza, 249 Ariz. 13 (App. 2020)

Issue:

Does a defendant commit multiple violations of 13-3415(A) when he or she possesses multiple objects of drug paraphernalia during one instance?



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41-1604.09(I) Parole eligibility certification; classifications; appeal; recertification; applicability; definition—Applicability.

I. This section applies to either of the following:


1. A person who commits a felony offense before January 1, 1994.
2. A person who is sentenced to life imprisonment and who is eligible for parole pursuant to section 13-716 or 13-718.

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Chaparro v. Shinn, 248 Ariz. 138 (2020)

Issue:

Whether, in light of 41-1604.09, a person convicted of first degree murder following a jury trial for actions that took place on or after January 1, 1994, is parole eligible after 25 years when the sentencing order states that the defendant is sentenced to "life without possibility of parole for 25 years?"



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